

Message Text

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NSAE-00 OIC-02 SIL-01 OPIC-03 STR-07 TRSE-00
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C O N F I D E N T I A L SECTION 01 OF 03 GENEVA 13160

E.O. 11652: GDS
TAGS: UNCTAD, ETRD, TECH
SUBJECT: TECHNOLOGY TRANSFER CODE OF CONDUCT CONFERENCE -
CONSULTATIONS ON ORGANIZATIONAL ASPECTS

1. SUMMARY: LIGHTLY ATTENDED REGIONAL CONSULTATIONS ON ORGANIZATIONAL MATTERS RELATED TO OCT-NOV CONFERENCE ON TECHNOLOGY TRANSFER CODE OF CONDUCT PRODUCED GENERALLY AGREED RECOMMENDATIONS CONCERNING AGENDA, RULES OF PROCEDURE AND ORGANIZATION OF WORK. HOWEVER, NUMBER OF DETAILED ISSUES WERE LEFT FOR CONFERENCE ITSELF TO DECIDE. SOME OF US OBJECTIVES GAINED, OTHERS STILL NEED BE SOUGHT AT CONFERENCE. END PRODUCT OF THREE DAYS OF CONSULTATIONS IS PAPER ENTITLED "SUGGESTIONS ON ORGANIZATIONAL ASPECTS OF UN CONFERENCE." END SUMMARY.

2. COMBINATION OF TDB AND AUGUST HOLIDAYS RESULTED IN LIGHT TURNOUT FOR REGIONAL CONSULTATIONS. GROUPS D AND 77 ESPECIALLY POORLY REPRESENTED. IT IS LIKELY THAT THIS WAS ONE FACTOR WHICH MADE G-77 COORDINATOR (BRAZILIAN FROM MISSION) RELUCTANT TO AGREE TO MANY GROUP B PROPOSALS.
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GROUP B CHAIRED, BY DEFAULT, BY ROBERTS (UK).

3. CONSULTATIONS CHAIRED BY SRONEK (CZECHOSLOVAKIA) AND COVERED ALL ITEMS ON PROPOSED AGENDA EXCEPT FOR ISSUES RELATING TO SUBSTANCE OF CODE ITSELF.

4. OPENING OF CONFERENCE: IT WAS AGREED THAT CONFERENCE

WILL START WITH BRIEF, FORMAL PLENARY AT 11 A.M., OCTOBER 16. BALANCE OF MORNING AND MOST OF AFTERNOON TO BE DEVOTED TO GROUP MEETINGS.

5. PRESIDENT OF CONFERENCE: IT WAS AGREED THAT GROUP D WOULD CHAIR CONFERENCE AND CREDENTIALS COMMITTEE.

6. RULES OF PROCEDURE: G-77 PREPARED TO ACCEPT RULES AS ISSUED. GROUP B DISCUSSED NUMBER OF POINTS IN ITS OWN CONSULTATIONS AND PROPOSED SEVERAL CHANGES TO G-77:

A) RULE 10 - SOME IN GROUP B WISHED TO PIN DOWN WHICH VICE PRESIDENT WOULD TAKE OVER IN PRESIDENT'S ABSENCE. IT WAS DETERMINED FROM UNCTAD LEGAL ADVISER CAULFIELD THAT PRESIDENT MAY CHOOSE WHOMSOEVER HE WISHES.

B) RULE 15 - USDEL (BOND, L/UNA) SUPPORTED BY SEVERAL DELS, WISHED TO INFORMALLY CONSULT G-77 TO SEE IF THEY WERE CONTENT WITH THIS OPEN INVITATION FOR UNCTAD SECRETARIAT INTERVENTION. JAPAN (KUNUGI) OPPOSED. DECISION WAS TO SEE IF G-77 ITSELF WOULD RAISE ISSUE. THEY DID NOT.

C) RULE 28 - KUNUGI (WHO WAS QUITE DIFFICULT THROUGHOUT MEETINGS, GENERALLY TAKING EITHER PRONAV-77 STANCES OR POSITIONS WITHOUT RATIONAL BASIS) WISHED TO LIMIT PROPOSALS TO BE CONSIDERED BY THE CONFERENCE TO THOSE PUT CONFIDENTIAL

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FORWARD BY STATES. OTHER DELS DID NOT WISH TO PROHIBIT NGOS OR SPECIALIZED AGENCIES FROM PUTTING FORWARD PROPOSALS. POINT THUS NOT RAISED WITH G-77.

D) RULE 43(2) - GROUP B CONCERNED THAT GENERAL COMMITTEE ALONE COULD SHIFT ALLOCATION OF WORK BETWEEN THE TWO MAIN COMMITTEES: USDEL PROPOSED THAT REALLOCATION DECISION HAD TO BE REACHED BY CONSENSUS OF ALL COMMITTEE CHAIRMEN, BUT GROUP B PROPOSED TO G-77 THAT GENERAL COMMITTEE COULD MAKE RECOMMENDATION TO CONFERENCE, WHICH WOULD TAKE ANY SUCH DECISION. G-77 CONCURRED.

E) RULE 48 - GROUP B CONCERNED THAT SUMMARY RECORDS OF MAIN COMMITTEE MEETINGS (WHERE NEGOTIATIONS WILL CBMETIMES OCCUR) WOULD TEND TO PRODUCE INFLEXIBILITY. (-77 AGREED, BUT ISSUE MOOT BECAUSE MONEY ALLOCATED ONLY FOR SUMMARY RECORDS OF PLENARY.

F) RULE 50 - FOR SAME REASONS AS ABOVE, USDEL WISHED TO CLOSE MEETINGS OF MAIN COMMITTEES TO THE PUBLIC. GROUP B DECLINED TO DO THIS, BUT DID AGREE AMONG ITSELF THAT WHENEVER MAIN COMMITTEE WAS ENGAGED IN NEGOTIATIONS, GROUP B

WOULD REQUEST THAT MEETING BE IN PRIVATE. POINT RAISED WITH G-77 ONLY TO EXTENT OF NOTING THAT THERE WAS A NEED FOR FLEXIBILITY ON WHEN MEETINGS WOULD BE OPEN TO PUBLIC.

G) RULE 52 - ON COUNCIL OF NAMIBIA, WESTERN FIVE (AND REST OF GROUP B) DECIDED TO FOLLOW PRECEDENT OF RECENT UNIDO CONFERENCE I.E. WE WOULD INTERPRET RULE 52 AS PRECLUDING COUNCIL OF NAMIBIA FROM VOTING IN LIGHT OF RULE 32, WHICH GIVES VOTE ONLY TO "EACH STATE" AT THE CONFERENCE. SHOULD COUNCIL ACTUALLY ATTEMPT TO VOTE AT CONFERENCE, WESTERN FIVE WOULD THEN SET FORTH THEIR POSITION. POINT THUS NOT RAISED WITH G-77.

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H) RULE 54 - USDEL, NOTING VAGUENESS AND CONFUSION OF THIS RULE, GOT GROUP B SUPPORT FOR PROPOSING SUBSTITUTE LANGUAGE DRAWN FROM GENERAL ASSEMBLY RES. 32/188 WHICH ESTABLISHED CONFERENCE, WHICH REFERS SPECIFICALLY TO NLMS "RECOGNIZED IN ITS REGION BY THE OAU." UNCTAD LEGAL ADVISER CAULFIELD STATED THAT THIS, IN FACT, WAS MEANING OF RULE, BUT HE WISHED TO MAINTAIN PRESENT LANGUAGE BECAUSE IT WAS CONSISTENT WITH RECENT SETS OF RULES OF PROCEDURE. USDEL COULD NOT MAINTAIN GROUP B INTEREST IN MATTER AND ACQUIESCED IN LIGHT OF CLEAR STATEMENT BY CAULFIELD AND HIS PROMISE TO HAVE RECORD REFLECT THIS UNDERSTANDING.

7. AGENDA: IN ORDER TO GET A STEP AWAY FROM APPEARANCE OF TREATY CONFERENCE, GROUP B PROPOSED REWORDING OF ITEM 9 TO

READ "DECISIONS ON ADOPTION OF FINAL DOCUMENT EMBODYING THE INTERNATIONAL CODE OF CONDUCT ON TRANSFER OF TECHNOLOGY." G-77 COUNTERED WITH WORDING FROM UNGA RES. 32/188 "DECISIONS NECESSARY FOR THE ADOPTION OF AN INTERNATIONAL CODE OF CONDUCT...." GROUP B CONCURRED.

8. ORGANIZATION OF CONFERENCE: G-77 TABLED PAPER (POUCHED CONFIDENTIAL

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ADAMS - EB/IFD/BP) WITH THEIR PROPOSALS. GROUP B GENERALLY AGREED WITH PAPER, RAISING FOLLOWING MAIN ISSUES:

A) STRUCTURE OF CONFERENCE - G-77 PROPOSED TWO COMMITTEES, FIRST (TO BE CHAIRED BY GROUP B) TO DO CHAPTERS HANDLED BY WORKING GROUPS 1 AND 3 OF IGE, SECOND (CHAIRED BY G-77) TO HANDLE RBPS/GUARANTEES. THE POSSIBILITY OF 1 OR MORE WORKING GROUPS FOR EACH COMMITTEE WAS RECOGNIZED, BUT NOTHING FIRM ESTABLISHED. USDEL ENDEAVORED TO GET GROUP B TO PUSH FOR CLEAR ESTABLISHMENT OF WORKING GROUPS AND ALLOCATION OF CHAPTERS AMONG THEM. GROUP B QUITE RELUCTANT TO GET INTO SUCH DETAIL AT THIS STAGE, BUT SEEMED TO AGREE AMONG THEMSELVES THAT EACH COMMITTEE SHOULD HAVE TWO WORKING GROUPS, INCLUDING ONE TO DO APPLICABLE LAW AND NATIONAL REGULATION. (KUNUGI WANTS ONE WORKING GROUP TO HANDLE ONLY APPLICABLE LAW). GROUP B DID PROPOSE TO G-77 THAT QUESTION OF IMPLEMENTATION OF CODE, WHICH G-77 HAD GIVEN TO FIRST COMMITTEE, BE CONSIDERED IN PLENARY ALONG WITH LEGAL NATURE OF CODE. G-77 ACCEPTED HAVING ITEM IN BOTH PLENARY (FOR DISCUSSION) AND COMMITTEE (FOR DRAFTING). EXCEPT FOR THIS ITEM, GROUP B UNRESPONSIVE TO USDEL ARGUMENTS THAT PLENARY SHOULD ALSO CONSIDER DEFINITIONS, PREAMBLE AND OBJECTIVES.

B) TIMING: ALL GROUPS AGREED THAT CONSIDERATION OF LEGAL NATURE OF CODE NOT BEGUN UNTIL 3RD WEEK OF CONFERENCE. GROUP B AGREED WITH USDEL THAT DEFINITIONS AND APPLICABLE LAW BE FIRST ITEMS CONSIDERED. HOWEVER, ARGUMENT THAT APPLICABLE LAW BE AMONG FIRST BECAUSE OF INADEQUATE ATTENTION TO IT IN IGE, ALSO LED GROUP B (PUSHED BY KUNUGI) TO BELIEVE THAT GUARANTEES SHOULD BE CONSIDERED BEFORE RBPS. GROUP B THUS PROPOSED MODIFYING G-77 TEXT, WHICH STATES THAT CHAPTERS SHOULD BE CONSIDERED BY CONFERENCE IN ORDER IN WHICH THEY APPEAR IN DRAFT CODE, TO SPECIFY EARLY

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ATTENTION TO DEFINITIONS, APPLICABLE LAW AND GUARANTEES. G-77 BALKED AND GROUP B CAVED, DECIDING ISSUE NOT WORTH

FIGHTING OVER AT THIS TIME. COMPROMISE LANGUAGE ALLOWS EACH WORKING GROUP TO DECIDE ITS OWN PRIORITIES.

C) G-77 PROPOSED ESTABLISHMENT OF "LEGAL DRAFTING GROUP IN 3RD WEEK OF CONFERENCE TO PULL TEXTS TOGETHER, ACHIEVE CONSISTENCY, CLARITY, ETC. GROUP WOULD BE ASSISTED BY UNCTAD LEGAL STAFF. AT REQUEST OF USDEL, GROUP B REQUESTED DELETION OF TERM "LEGAL" FROM TITLE OF GROUP AND OF REFERENCE TO LEGAL STAFF. G-77 CONCURRED IN DELETING TERM "LEGAL" AND IT WAS AGREED TO PUT "GENERAL" IN ITS PLACE. REFERENCE TO LEGAL STAFF WAS DELETED.

9. GROUP B COORDINATOR: ISSUE OF GROUP B COORDINATOR STILL UP IN AIR. FRG WILLING TO PROVIDE "POLITICAL-LEVEL" COORDINATOR, BUT BELIEVES COORDINATOR ON TECHNICAL LEVEL ALSO NEEDED. IN CORRIDOR TALK, USDEL NOTED THAT, SHOULD US ATTEND CONFERENCE, AL ADAMS WILLING TO SERVE AS TECHNICAL COORDINATOR. FRG DEL (PRAUN) PLEASED, BUT HE AND DUTCH DEL NOTED THAT THIS WOULD GIVE US TWO COORDINATOR POSITIONS, WHICH WOULD PRESENT A PROBLEM. KUNUGI APPEARS TO BE ANGLING FOR TECHNICAL-LEVEL COORDINATOR ROLE, EVEN TO EXTENT OF PREPARING HIS OWN PAPER ON ISSUES DEALT WITH IN CONSULTATIONS. (THIS PAPER, POUCHED TO ADAMS, TOTALLY IGNORED BY GROUP B). COORDINATOR ISSUE WILL NEED TO BE ADDRESSED IN PARIS MEETING. SCANS ARE PUSHING KUNUGI FOR CHAIRMAN OF PARIS SESSION. USDEL BELIEVES THAT SHOULD US ATTEND CONFERENCE, US SHOULD MOVE DECISIVELY AT PARIS MEETING TO GET COORDINATOR POSITION, ELSE KUNUGI COULD GET POSITION BY DEFAULT, WHICH WOULD, TO PUT MILDLY, BE MOST UNFORTUNATE FOR GROUP B.

10. US PARTICIPATION IN CONFERENCE: USDEL RESPONDED TO INQUIRIES BY ADVISING SEVERAL GROUP B DELS IN CORRIDOR

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TALKS THAT US STILL SERIOUSLY STUDYING QUESTION OF WHETHER TO ATTEND CONFERENCE. MOST DELS SURPRISED, INDICATING THAT THERE NEVER WAS ANY DOUBT IN THEIR MINDS THAT US WOULD ATTEND. FRG DEL SAID HE THOUGHT US HAD BEEN BLUFFING. UK DEL THOUGHT THAT SHOULD US ACTUALLY NOT ATTEND, UK AND FRG WOULD BE PLACED IN AWKWARD POSITION, BUT HE DOUBTED THAT SOCIALIST GOVERNMENT IN UK COULD TAKE DECISION NOT TO ATTEND.

11. LEVEL OF PARTICIPATION: CHAIRMAN ASKED GROUPS TO INDICATE LEVEL AT WHICH THEY WOULD ATTEND. GROUP B INDICATED NO DECISION YET MADE; (IN CAUCUS DISCUSSION IT APPEARED THAT SOME DELS MIGHT BE REPRESENTED BY GENEVA AMBASSADORS, MOST AT LOWER LEVEL, BUT NO FIRM DECISIONS HAVE IN FACT BEEN MADE) G-77 MADE STRONG STATEMENT AS TO IMPORTANCE OF CONFERENCE AND THAT THEY EXPECTED ATTENDANCE BY MANY OFFICIALS AT DEPUTY OR UNDER SECRETARY OF STATE LEVEL, ESPECIALLY FOR CONSIDERATION OF SUCH "POLITICAL" TOPICS AS LEGAL NATURE OF CODE. SUCH POLITICAL DECISIONS NECESSARY AS WORK ON "TECHNICAL LEVEL" PRACTICALLY COMPLETED. VANDEN HEUVEL
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